

KEVIN DITTRICH
McFARLIN -v- WORD ENTERPRISES

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 IN THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 CHAD McFARLIN, individually</p> <p>5 and on behalf of all</p> <p>6 similarly situated persons,</p> <p>7 Plaintiff,</p> <p>8 -v- No. 2:16-cv-12536</p> <p>9 Hon. Gershwin A. Drain</p> <p>10 THE WORD ENTERPRISES, LLC,</p> <p>11 et al.,</p> <p>12 Defendants.</p> <p>13 _____/</p> <p>14 PAGE 1 TO 124</p> <p>15 The deposition of KEVIN DITTRICH,</p> <p>16 Taken at 221 North Main Street, Suite 300,</p> <p>17 Ann Arbor, Michigan,</p> <p>18 Commencing at 10:13 a.m.,</p> <p>19 Monday, June 19, 2017,</p> <p>20 Before Cheryl McDowell, CSR-2662, RPR.</p>	<p>1 TABLE OF CONTENTS</p> <p>2 Witness Page</p> <p>3 KEVIN DITTRICH</p> <p>4</p> <p>5 EXAMINATION BY MS. ELLIS: 5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit Page</p> <p>9 DEPOSITION EXHIBIT NO. 1 5</p> <p>10 Notice of Taking Deposition for</p> <p>11 The Word Enterprises LLC</p> <p>12 DEPOSITION EXHIBIT NO. 2 35</p> <p>13 Articles of Organization for</p> <p>14 The Word Enterprises, L.L.C.</p> <p>15 DEPOSITION EXHIBIT NO. 3 42</p> <p>16 Articles of Organization for</p> <p>17 The Word Enterprises-St. Johns, L.L.C.</p> <p>18 DEPOSITION EXHIBIT NO. 4 48</p> <p>19 Articles of Organization for</p> <p>20 The Word Enterprises-Lansing, L.L.C.</p> <p>21 DEPOSITION EXHIBIT NO. 5 49</p> <p>22 Articles of Organization for</p> <p>23 The Word Enterprises-Haslett, LLC</p> <p>24 DEPOSITION EXHIBIT NO. 6 60</p> <p>25 Employee Handbook</p> <p>26 DEPOSITION EXHIBIT NO. 7 62</p> <p>27 Minimum Wage Notice to Tipped Employees</p>
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<p>1 APPEARANCES:</p> <p>2 MS. TIFFANY R. ELLIS - P81456</p> <p>3 Blanchard & Walker PLLC</p> <p>4 221 North Main Street, Suite 300</p> <p>5 Ann Arbor, Michigan 48104</p> <p>6 (734) 619-0970</p> <p>7 tiffanyrellis@gmail.com</p> <p>8 Appearing on behalf of the Plaintiff.</p> <p>9</p> <p>10 MR. JEFFREY S. THEUER - P44161</p> <p>11 Loomis Ewert Parsley Davis & Gotting PC</p> <p>12 124 West Allegan Street, Suite 700</p> <p>13 Lansing, Michigan 48933</p> <p>14 (517) 482-2400</p> <p>15 jstheuer@loomislaw.com</p> <p>16 Appearing on behalf of the Defendants.</p> <p>17</p> <p>18 ALSO PRESENT: MS. MICHELE FOLLMAN</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION EXHIBIT NO. 8 95</p> <p>2 Google Map of St. Johns Delivery Area</p> <p>3 DEPOSITION EXHIBIT NO. 9 95</p> <p>4 Google Map of Haslett Delivery Area</p> <p>5 DEPOSITION EXHIBIT NO. 10 95</p> <p>6 Google Map of Perry Delivery Area</p> <p>7 DEPOSITION EXHIBIT NO. 11 106</p> <p>8 Conditional Employee or</p> <p>9 Food Employee Reporting Agreement</p> <p>10 DEPOSITION EXHIBIT NO. 12 109</p> <p>11 Summary Report for Andrew Wilson</p> <p>12 DEPOSITION EXHIBIT NO. 13 110</p> <p>13 Daily Delivery Orders</p> <p>14</p> <p>15 (Exhibits attached to transcript.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 5</p> <p>1 Ann Arbor, Michigan</p> <p>2 Monday, June 19, 2017</p> <p>3 About 10:13 a.m.</p> <p>4 (Deposition Exhibit No. 1 marked and</p> <p>5 attached.)</p> <p>6 KEVIN DITTRICH,</p> <p>7 having first been duly sworn, was examined and testified</p> <p>8 on his oath as follows:</p> <p>9 EXAMINATION BY MS. ELLIS:</p> <p>10 Q. Good morning, Mr. Dittrich.</p> <p>11 A. Good morning.</p> <p>12 Q. Dittrich, Deetrich?</p> <p>13 A. Dittrich.</p> <p>14 Q. Dittrich. Sorry about that.</p> <p>15 A. No, that's all right.</p> <p>16 Q. Can you please state your name for the record?</p> <p>17 A. Kevin Dittrich.</p> <p>18 Q. And what is your home address?</p> <p>19 A. 5744 South Friegel Road, Owosso, Michigan, 48867.</p> <p>20 Q. What about your telephone number?</p> <p>21 A. (989) 277-7660.</p> <p>22 Q. What's your work address?</p> <p>23 A. I have a home office.</p> <p>24 Q. Okay. And that's the same on Friegel Road?</p> <p>25 A. Yes, Friegel, yes.</p>	<p style="text-align: right;">Page 7</p> <p>1 A. No.</p> <p>2 Q. Have you been involved in any personal litigation?</p> <p>3 A. No.</p> <p>4 Q. Just a couple of reminders. I'll try to ask you</p> <p>5 questions and be clear with those. If you don't</p> <p>6 understand, you can ask me to clarify.</p> <p>7 Let's not talk over each other for the sake</p> <p>8 of the court reporter. So please wait for me to</p> <p>9 finish a question even if you think you know the</p> <p>10 answer to that question, and I'll try to do the same</p> <p>11 with your answers.</p> <p>12 At times Mr. Theuer may object, but unless</p> <p>13 he tells you not to answer, still go ahead and answer.</p> <p>14 A. Okay.</p> <p>15 Q. Did you review any documents in preparation for</p> <p>16 today's deposition?</p> <p>17 A. Yes.</p> <p>18 Q. What did you review?</p> <p>19 A. The plaintiff versus the defendant. It's the notice</p> <p>20 of deposition for what we're about to talk about</p> <p>21 today.</p> <p>22 Q. I'm handing you what's been marked as Exhibit 1.</p> <p>23 Are you talking about the notice of</p> <p>24 deposition that I've just handed you?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. And who is your employer?</p> <p>2 A. I'm self-employed.</p> <p>3 Q. What's your occupation?</p> <p>4 A. Restaurateur.</p> <p>5 Q. What's your work telephone number?</p> <p>6 A. Same.</p> <p>7 Q. Have you ever had your deposition taken before?</p> <p>8 A. Yes.</p> <p>9 Q. Under what circumstances?</p> <p>10 A. Lawsuit.</p> <p>11 Q. Were you being sued or did you sue?</p> <p>12 A. My company.</p> <p>13 Q. Which company?</p> <p>14 A. The Word Enterprises.</p> <p>15 Q. Is there more than one lawsuit or just one?</p> <p>16 A. It's finished. It was a long time ago. There was</p> <p>17 just one.</p> <p>18 Q. And what was that lawsuit about?</p> <p>19 A. Delivery driver got in an accident.</p> <p>20 Q. And the driver sued you or the company rather?</p> <p>21 A. The company sued my company, that individual.</p> <p>22 Q. You were deposed?</p> <p>23 A. Yep. Yes.</p> <p>24 Q. Have you been involved in any other litigation with</p> <p>25 The Word Enterprises?</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. You reviewed that prior to today?</p> <p>2 A. I did.</p> <p>3 Q. Did you review anything else prior to today?</p> <p>4 A. Can you be specific?</p> <p>5 Q. Did you review any documents to prepare for your</p> <p>6 testimony today?</p> <p>7 A. Defendants' Initial Disclosures, Defendants' Answers</p> <p>8 to the Class Action Complaint, Affirmative Defense and</p> <p>9 Demand for Jury Trial and Class Action Complaint, and,</p> <p>10 also, it looks like a spreadsheet for a Chad McFarlin,</p> <p>11 Damage Estimate, June 9th of 2017. Those were the</p> <p>12 documents.</p> <p>13 Q. Are those the documents that are in front of you right</p> <p>14 now?</p> <p>15 A. Yep.</p> <p>16 Q. Did you review any other documents besides those that</p> <p>17 you just went over?</p> <p>18 A. No, not to my knowledge.</p> <p>19 Q. Did you review any -- anything on the computer at the</p> <p>20 company before today?</p> <p>21 A. No.</p> <p>22 Q. Did you speak with anyone to prepare for today's</p> <p>23 deposition?</p> <p>24 A. Yes.</p> <p>25 Q. Who?</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. Overtime?</p> <p>2 A. Yes.</p> <p>3 Q. Tips?</p> <p>4 A. They're clarified a couple of different ways. I'm not</p> <p>5 really sure if I understand your question on that one.</p> <p>6 As far as tips, do you mean -- you've got</p> <p>7 to be specific, please.</p> <p>8 Q. Did the system track tips?</p> <p>9 A. The new system does. The old system didn't.</p> <p>10 Q. What was the name of the old system?</p> <p>11 A. Vital-Link.</p> <p>12 Q. Did Vital-Link do those other items that we just</p> <p>13 discussed?</p> <p>14 A. Pretty much, yes.</p> <p>15 Q. Are there any of those things that Vital-Link did not</p> <p>16 do?</p> <p>17 A. No, not to my knowledge.</p> <p>18 Q. But it just didn't track tips?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know when Vital-Link stopped being used?</p> <p>21 A. I don't have an exact. I don't even know the month.</p> <p>22 Q. Do you know the year?</p> <p>23 A. Not to be certain. I apologize. I know we had a</p> <p>24 transition, so I want to say maybe 2015.</p> <p>25 Q. And did you use Vital-Link in your stores?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Did you have a franchisee handbook as well?</p> <p>2 A. For my personal stores or in my job as a corporate</p> <p>3 consultant?</p> <p>4 Q. As a corporate consultant.</p> <p>5 A. I had access to a handbook, but I didn't have a</p> <p>6 handbook myself.</p> <p>7 Q. Was that something you would provide to franchisee</p> <p>8 owners?</p> <p>9 A. I would not. The corporate office would.</p> <p>10 Q. Were you ever provided with one as a Hungry Howie's</p> <p>11 owner yourself?</p> <p>12 A. Yes.</p> <p>13 Q. When was that?</p> <p>14 A. Dates back to my first restaurant that I've already</p> <p>15 given you, so whatever date that was.</p> <p>16 Q. Every time you bought into or opened a restaurant,</p> <p>17 would you be provided with a franchisee handbook of</p> <p>18 some sort?</p> <p>19 A. Yes.</p> <p>20 Q. And what would that include?</p> <p>21 A. That's something we could forward on to you if you</p> <p>22 needed it, but it's just too numerous to --</p> <p>23 Q. Would it include topics such as pay practices?</p> <p>24 A. Not practices. State law, federal law.</p> <p>25 Q. What about reimbursement processes?</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Yes.</p> <p>2 Q. Are there any other programs that you used in your</p> <p>3 stores?</p> <p>4 A. No. For us it was Vital-Link, and then we switched</p> <p>5 over to Revention.</p> <p>6 Q. As a consultant for Hungry Howie's, did you consult</p> <p>7 with franchisees or business owners on their pay</p> <p>8 processes?</p> <p>9 A. We could give recommendations based on what other</p> <p>10 people were doing, but we didn't consult and tell them</p> <p>11 what to pay people or how to pay them, I mean, besides</p> <p>12 Michigan or federal law.</p> <p>13 Q. When you say we could, what do you mean by that?</p> <p>14 A. If they asked, we would, we would help them.</p> <p>15 Q. Did you provide them with any guidance on how to pay</p> <p>16 delivery drivers?</p> <p>17 A. I would have to refer to the employee handbook. We</p> <p>18 have a corporate -- I mean, are we talking about my</p> <p>19 own personal stores, or we talking about corporate?</p> <p>20 Q. When you were a consultant.</p> <p>21 A. A consultant. We have an employee handbook that they</p> <p>22 would use, and we would refer back to that.</p> <p>23 Q. You would direct the franchisee owners to the</p> <p>24 handbook?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. No.</p> <p>2 Q. As a consultant would you consult with franchisee</p> <p>3 owners about their reimbursement processes for</p> <p>4 drivers?</p> <p>5 A. Once again, I could only give them based on previous</p> <p>6 restaurants and what other franchisees might be doing,</p> <p>7 but it wasn't a recommendation from me personally.</p> <p>8 Q. You said you no longer work for Hungry Howie's</p> <p>9 corporate, is that correct?</p> <p>10 A. Correct.</p> <p>11 Q. Today as a restaurateur, your work is limited to</p> <p>12 running restaurants, is that accurate?</p> <p>13 A. Correct.</p> <p>14 Q. How many total restaurants do you have open today?</p> <p>15 A. Nine.</p> <p>16 Q. You said there was Durand, correct?</p> <p>17 A. Uh-huh. Yes.</p> <p>18 Q. St. Johns?</p> <p>19 A. Closed.</p> <p>20 Q. Owosso?</p> <p>21 A. Closed.</p> <p>22 Q. East Lansing?</p> <p>23 A. Yes.</p> <p>24 Q. Lansing one on Waverly?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 33</p> <p>1 Q. Lansing two on Holmes?</p> <p>2 A. Yes.</p> <p>3 Q. The Smokehouse?</p> <p>4 A. Yes.</p> <p>5 Q. Perry Hungry Howie's?</p> <p>6 A. Yes.</p> <p>7 Q. St. Johns Hungry Howie's?</p> <p>8 A. Closed.</p> <p>9 Q. What am I missing?</p> <p>10 A. Lake Lansing Road, East Lansing.</p> <p>11 Q. Are there two East Lansing locations?</p> <p>12 A. Yes. You're missing Holt.</p> <p>13 Q. Holt.</p> <p>14 A. How many do you have there, could I ask?</p> <p>15 Q. Eight. The Smokehouse.</p> <p>16 A. Haslett.</p> <p>17 Q. Haslett.</p> <p>18 A. I may not have given you that earlier.</p> <p>19 Q. You didn't Haslett.</p> <p>20 A. I apologize.</p> <p>21 Q. We'll go over it in a minute.</p> <p>22 Is it your understanding that you're here</p> <p>23 to testify on behalf of The Word Enterprises, LLC,</p> <p>24 today --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 A. The Word Enterprises-Perry.</p> <p>2 (Deposition Exhibit No. 2 marked and</p> <p>3 attached.)</p> <p>4 BY MS. ELLIS:</p> <p>5 Q. Was that in 2004? 2003. I'm sorry.</p> <p>6 A. This says 2004, but --</p> <p>7 Q. Well, I'm a little confused, and I'm hoping you can</p> <p>8 clear it up for me on the relationship between The</p> <p>9 Word Enterprises-Perry, LLC, and --</p> <p>10 MR. THEUER: I'm sorry. This is different.</p> <p>11 The one that I have is different than the one that is</p> <p>12 in front of him, Mr. Dittrich. This says Word</p> <p>13 Enterprises, LLC. This one says The Word</p> <p>14 Enterprises-Perry, LLC.</p> <p>15 MS. ELLIS: I apologize.</p> <p>16 THE WITNESS: There's two separate</p> <p>17 documents.</p> <p>18 MR. THEUER: Yeah. Those are different</p> <p>19 companies.</p> <p>20 MS. ELLIS: Just a moment. I don't know</p> <p>21 how that got mixed up.</p> <p>22 Let's just go off the record for a second.</p> <p>23 (Off the record at 10:57 a.m.)</p> <p>24 (Back on the record at 10:58 a.m.)</p> <p>25 MS. ELLIS: Go back on the record.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. -- as well as The Word Enterprises-Perry?</p> <p>2 A. Yes.</p> <p>3 Q. St. Johns?</p> <p>4 A. Yes.</p> <p>5 Q. Haslett?</p> <p>6 A. Yes.</p> <p>7 Q. Lansing?</p> <p>8 A. Yes.</p> <p>9 Q. Owosso?</p> <p>10 A. Yeah.</p> <p>11 Can I clarify, ask for a clarification?</p> <p>12 Q. Sure.</p> <p>13 A. When you said The Word Enterprises and then you</p> <p>14 hyphenated all those other ones, there is no Owosso,</p> <p>15 there is no Lansing. I think I saw that in the</p> <p>16 documentation. I just wanted to make sure that we're</p> <p>17 clear.</p> <p>18 Q. We'll go back over that.</p> <p>19 A. Yeah.</p> <p>20 MS. ELLIS: Just off the record for a</p> <p>21 second.</p> <p>22 (Off the record at 10:54 a.m.)</p> <p>23 (Back on the record at 10:54 a.m.)</p> <p>24 BY MS. ELLIS:</p> <p>25 Q. What was the first Word Enterprises that you opened?</p>	<p style="text-align: right;">Page 36</p> <p>1 BY MS. ELLIS:</p> <p>2 Q. Handing you Exhibit 2, this is the Articles of</p> <p>3 Organization for The Word Enterprises, LLC, is that</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that was incorporated in 2003?</p> <p>7 A. Correct.</p> <p>8 Q. Is this your company?</p> <p>9 A. Yes.</p> <p>10 Q. You are listed here as the resident agent of this</p> <p>11 company?</p> <p>12 A. Yes.</p> <p>13 Q. You are the president of this company?</p> <p>14 A. Correct.</p> <p>15 Q. Are there any other owners of this company?</p> <p>16 A. Yes.</p> <p>17 Q. Who?</p> <p>18 A. Denny Geisenhaver.</p> <p>19 Q. How much of the company does he own?</p> <p>20 A. Forty-nine percent.</p> <p>21 Q. Are there any other owners?</p> <p>22 A. Just my wife, Susan, and I.</p> <p>23 Q. Do you own fifty-one percent?</p> <p>24 A. Yes.</p> <p>25 Q. Are there any directors of this company?</p>

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<p style="text-align: right;">Page 41</p> <p>1 Q. What about you?</p> <p>2 A. If need be.</p> <p>3 Q. The power to supervise employees, the general manager</p> <p>4 has it?</p> <p>5 A. That would be Matt on a daily basis, the general</p> <p>6 manager of the restaurant. Michele would oversee him.</p> <p>7 Q. And then ultimately you?</p> <p>8 A. Right.</p> <p>9 Q. What about the rate and methods of pay. You said</p> <p>10 that's something you do along with Michele?</p> <p>11 A. Myself and Michele.</p> <p>12 Q. That's not something the general manager would do?</p> <p>13 A. They might have a starting pay after we've established</p> <p>14 it, but we establish the guidelines.</p> <p>15 Q. You establish the pay guidelines, and the general</p> <p>16 manager would determine where in those guidelines --</p> <p>17 A. Yes.</p> <p>18 Q. -- an employee fits, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, there was also a Word Enterprises-Perry, a</p> <p>21 different LLC, is that right?</p> <p>22 A. I think it's a paperwork clerical error. We have --</p> <p>23 I'll tell you what we do have if this helps.</p> <p>24 Q. Yes.</p> <p>25 A. The Word Enterprises-Perry, LLC, there is no The Word</p>	<p style="text-align: right;">Page 43</p> <p>1 A. Yes.</p> <p>2 Q. What is the 1474 Haslett address that's on that, if</p> <p>3 you know?</p> <p>4 A. Yeah. That's Denny Geisenhaver. That's his address.</p> <p>5 Q. And the 401 Grand River, what is that?</p> <p>6 A. That's a residence that I own, used to be my home</p> <p>7 office.</p> <p>8 Q. Who owns this company? Are you the sole owner of this</p> <p>9 company?</p> <p>10 A. Denny Geisenhaver and myself.</p> <p>11 Q. What percentage do you own?</p> <p>12 A. Fifty-one percent, Denny at forty-nine percent.</p> <p>13 But this business has been dissolved. It</p> <p>14 just may not have occurred. My attorney, my</p> <p>15 accountant filed the paperwork, so --</p> <p>16 Q. What did this business do?</p> <p>17 A. Operated a Hungry Howie's Pizza.</p> <p>18 Q. Was that in St. Johns?</p> <p>19 A. Yes.</p> <p>20 Q. When did that location close?</p> <p>21 A. I can't remember exactly how many months ago it was.</p> <p>22 Q. In 2017?</p> <p>23 MR. THEUER: Just testify from your own</p> <p>24 knowledge.</p> <p>25 THE WITNESS: '16, 2016 --</p>
<p style="text-align: right;">Page 42</p> <p>1 Enterprises. I think that's a paperwork issue that we</p> <p>2 clarified and cleaned up maybe.</p> <p>3 Okay. There's another company called The</p> <p>4 Word Properties which Denny Geisenhaver and myself own</p> <p>5 for the sole purpose of a building we purchased in</p> <p>6 St. Johns, Michigan, which at that time we operated a</p> <p>7 Hungry Howie's Pizza out of.</p> <p>8 Q. And you still own that building?</p> <p>9 A. Yes.</p> <p>10 Q. Exhibit 2 that I just handed to you, is it your</p> <p>11 understanding that that is The Word Enterprises-Perry</p> <p>12 location?</p> <p>13 A. Yes.</p> <p>14 Q. And that that, the proper paperwork has been filed</p> <p>15 with the State of Michigan to correct this?</p> <p>16 A. Yes.</p> <p>17 (Deposition Exhibit No. 3 marked and</p> <p>18 attached.)</p> <p>19 BY MS. ELLIS:</p> <p>20 Q. I'm handing you Exhibit 3.</p> <p>21 This is the Articles of Organization for</p> <p>22 The Word Enterprises-St. Johns, Incorporated, in 2004,</p> <p>23 is that correct?</p> <p>24 A. Correct.</p> <p>25 Q. And you are the registered agent of that company?</p>	<p style="text-align: right;">Page 44</p> <p>1 BY MS. ELLIS:</p> <p>2 Q. That's fine.</p> <p>3 A. -- I think.</p> <p>4 Q. Why did it close?</p> <p>5 A. Lack of sales.</p> <p>6 Q. Was there a general manager of that store?</p> <p>7 A. Yes.</p> <p>8 Q. Who was that, do you remember?</p> <p>9 A. At that time? I'm sorry. At that time, I can't</p> <p>10 remember her name.</p> <p>11 Q. The Word Enterprises-St. Johns, were there officers of</p> <p>12 that company?</p> <p>13 A. Yes.</p> <p>14 Q. Who were they?</p> <p>15 A. Kevin Dittrich, myself, and Denny Geisenhaver.</p> <p>16 Q. What was your position?</p> <p>17 A. President.</p> <p>18 Q. Was Denny vice president?</p> <p>19 A. Yes.</p> <p>20 Q. Anyone else?</p> <p>21 A. My wife, Susan, would be treasurer and secretary.</p> <p>22 Q. Did The Word Enterprises-St. Johns also employ a</p> <p>23 general manager to oversee the day-to-day operations</p> <p>24 of the St. Johns store?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q. That person would have the same responsibilities as</p> <p>2 the general manager at the Perry location we just</p> <p>3 discussed?</p> <p>4 A. Yes.</p> <p>5 Q. Did Michele oversee that St. Johns location?</p> <p>6 A. Yes.</p> <p>7 Q. As area director?</p> <p>8 A. Yes.</p> <p>9 Q. She did the same things for the St. Johns location as</p> <p>10 she does for the Perry location?</p> <p>11 A. Yes.</p> <p>12 Q. Was there anything different in how the Perry</p> <p>13 location -- pardon me -- the St. Johns location was</p> <p>14 run day-to-day than the Perry location?</p> <p>15 A. One distinct difference.</p> <p>16 Q. What was that?</p> <p>17 A. Delivery range.</p> <p>18 Q. And why was that different?</p> <p>19 A. Perry had a unique delivery range because we delivered</p> <p>20 to a town that was a ways away.</p> <p>21 Q. That's Laingsburg?</p> <p>22 A. Yes.</p> <p>23 Q. Are there any other differences between the day-to-day</p> <p>24 operations of the Perry location and the St. Johns</p> <p>25 location?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. No.</p> <p>2 Q. Any differences in how the payroll records were</p> <p>3 maintained between the St. Johns location and the</p> <p>4 Perry location?</p> <p>5 A. No.</p> <p>6 Q. And were you the sole check -- authorized check signer</p> <p>7 for the St. Johns location as well?</p> <p>8 A. Yes.</p> <p>9 Q. Was -- were all the records that we discussed as being</p> <p>10 capable of being stored in the Revention System stored</p> <p>11 in the Revention System for the St. Johns location?</p> <p>12 A. Yes.</p> <p>13 Q. Were they also stored in that system for the Perry</p> <p>14 location?</p> <p>15 A. We had a time period to where we switched from one</p> <p>16 system to another system. Perry happened first.</p> <p>17 Therefore, we had two different computer systems that</p> <p>18 we used.</p> <p>19 Q. When did St. Johns happen, if you recall?</p> <p>20 A. When we got the new updated system you mean?</p> <p>21 Q. Yes.</p> <p>22 A. I'm going to guess 2015 I think.</p> <p>23 Q. And were you on a Link --</p> <p>24 A. Vital-Link.</p> <p>25 Q. Vital-Link before that?</p>
<p style="text-align: right;">Page 46</p> <p>1 A. I don't believe so.</p> <p>2 Q. Were there any differences in the payroll practices</p> <p>3 between the St. Johns location and the Perry location?</p> <p>4 A. No.</p> <p>5 Q. Were there any differences --</p> <p>6 A. Could you repeat that again? What was that last?</p> <p>7 Q. I said were there any differences between -- in the</p> <p>8 payroll practices between the Perry location and the</p> <p>9 St. Johns location?</p> <p>10 A. There was, and one would be just the delivery fees</p> <p>11 that we paid the drivers was more at Perry than it was</p> <p>12 at St. Johns because of the distance that they drove.</p> <p>13 Q. When you say it was more, you mean that there was two</p> <p>14 separate rates in the Perry store for delivery</p> <p>15 reimbursement versus one rate at the St. Johns store,</p> <p>16 is that right?</p> <p>17 A. Yes.</p> <p>18 Q. We'll talk about that in just a second. We'll set</p> <p>19 that aside for now.</p> <p>20 Were there any other differences in the</p> <p>21 payroll practices besides that between the St. Johns</p> <p>22 location and the Perry location?</p> <p>23 A. I don't think so.</p> <p>24 Q. Any differences between the HR processes in the</p> <p>25 St. Johns location and the Perry location?</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes.</p> <p>2 Q. That was at the St. Johns location?</p> <p>3 A. Yes.</p> <p>4 Q. With respect to the St. Johns location, I asked you a</p> <p>5 series of questions before about what the general</p> <p>6 manager could do as far as hiring and firing</p> <p>7 employees, changing schedules, determining the rate of</p> <p>8 pay, supervising employees.</p> <p>9 Was the general manager the same way for</p> <p>10 the St. Johns location?</p> <p>11 A. Yes.</p> <p>12 Q. Were Michele's responsibilities the same with respect</p> <p>13 to the St. Johns location?</p> <p>14 A. Yes.</p> <p>15 Q. And did you and Michele together determine the rate</p> <p>16 and level of pay and reimbursement for employees in</p> <p>17 the St. Johns location?</p> <p>18 A. Yes.</p> <p>19 (Deposition Exhibit No. 4 marked and</p> <p>20 attached.)</p> <p>21 BY MS. ELLIS:</p> <p>22 Q. Handing you Exhibit 4. This is the Articles of</p> <p>23 Incorporation -- Organization, pardon me, from LARA</p> <p>24 for The Word Enterprises-Lansing.</p> <p>25 Is this a company that you own?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A. We were going to start it, and then it never actually 2 took place. 3 Q. That was in 2005? 4 A. Correct. 5 Q. So does The Word Enterprises-Lansing operate today? 6 A. Never did, never went into existence. 7 Q. Did it ever operate or own any businesses? 8 A. No. 9 (Deposition Exhibit No. 5 marked and 10 attached.) 11 BY MS. ELLIS: 12 Q. Handing you Exhibit 5 which is the Articles of 13 Organization for The Word Enterprises-Haslett. 14 This was incorporated in 2008, is that 15 right? 16 A. Yes. 17 Q. Are you an owner of this company? 18 A. Yes. 19 Q. What percentage do you own? 20 A. At this time or at that time when I organized it? 21 Q. Well, let's start with that time. 22 A. When I organized it? 23 Q. Yes. 24 A. I was a fifty-one percent owner. 25 Q. Who was the -- who are the other owners?</p>	<p style="text-align: right;">Page 51</p> <p>1 Geisenhaver would be either a secretary or treasurer, 2 one of those two. 3 Q. And the sole purpose of The Word Enterprises-Haslett 4 is to operate the Hungry Howie's location in Haslett? 5 A. Correct. 6 Q. Is there a general manager at that location? 7 A. Yes. 8 Q. Does Michele also serve as the area director for that 9 location? 10 A. Yes. 11 Q. Does the general manager of the Haslett location have 12 the same responsibilities and capabilities as those 13 other two locations that we discussed already? 14 A. Yes. 15 Q. Does Michele have the same responsibilities as it 16 relates to the Haslett location as we discussed for 17 the other locations? 18 A. Yes. 19 Q. And you do as well? 20 A. Yes. 21 Q. So you and Michele set the pay rate and reimbursement 22 rate, and that's implemented by the general manager? 23 A. Yes. 24 Q. What is the name of the company that owns the Durand 25 Hungry Howie's location?</p>
<p style="text-align: right;">Page 50</p> <p>1 A. My wife, Susan. 2 Q. What percentage does she own? 3 A. I mean, it goes into my trust as twenty-five and 4 twenty-six. 5 Q. She was included in the fifty-one percent? 6 A. Yes. 7 And then the other owner would have been 8 Denny Geisenhaver and Sue Geisenhaver. 9 Q. And they own forty-nine percent? 10 A. Correct. 11 Q. At some point that ownership changed? 12 A. Yes. 13 Q. When was that? 14 A. I think it was either end of last year or this year. 15 Q. And how did it change? 16 A. They went up to seventy-four percent ownership and I 17 went to twenty-six. 18 Q. Why? 19 A. They live in Haslett. They have another business in 20 Haslett. They want their kids to possibly get 21 involved, so I wanted to sell them a restaurant that 22 would help them. 23 Q. Who are the officers of this company? 24 A. Same as the others, myself as president, Denny as vice 25 president, and still my wife, Susan, possibly Sue</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Dittrich Investments II. 2 Q. Are there any other owners of that company? 3 A. Just my wife, Susan, and I. 4 Q. Do you own the Durand location one hundred percent? 5 A. Yes. 6 Q. Is Michele an area director for that location? 7 A. Yes. 8 Q. Is there a general manager for that location? 9 A. Yes. 10 Q. Does that general manager have the same duties and 11 responsibilities as the St. Johns, Perry, and Haslett 12 locations that we just discussed? 13 A. Yes. 14 Q. Does Michele have the same responsibilities for the 15 Durand location as the St. Johns, Perry, and Haslett 16 locations that we just discussed? 17 A. Yes. 18 Q. And do you have those same responsibilities? 19 A. Yes. 20 Q. Do you also determine the pay and reimbursement rate 21 for drivers for that Durand location? 22 A. Yes. 23 Q. And that's implemented by the general manager of that 24 location? 25 A. Correct.</p>

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<p style="text-align: right;">Page 53</p> <p>1 Q. What about the Lansing location on Waverly Road, what 2 company owns that location?</p> <p>3 A. B period, A period, C period, Foods, Incorporated, 4 B.A.C., B period, A period, C period, B.A.C. Foods.</p> <p>5 Q. And you said that Don Copus is an owner of that 6 company along with you?</p> <p>7 A. Yes.</p> <p>8 Q. What percentage does he own?</p> <p>9 A. Along with Dominic Carbone.</p> <p>10 Q. Dominic owns thirteen percent?</p> <p>11 A. No. Switch it around. Don owns thirteen percent, 12 Dominic owns fifty percent, I now own thirty-seven 13 percent.</p> <p>14 Q. Does Michele oversee that Lansing Waverly Road 15 location as an area manager?</p> <p>16 A. No.</p> <p>17 Q. Is there another area manager that oversees that?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. Brad, last name F-O-L-L-M-A-N.</p> <p>21 Q. Who is Brad paid by?</p> <p>22 A. It's an administrative fee paid for out of one of our 23 other restaurants there that we disburse evenly over 24 those five restaurants. I can give you -- I can give 25 those to you if you want if it helps.</p>	<p style="text-align: right;">Page 55</p> <p>1 Enterprises?</p> <p>2 A. No.</p> <p>3 Q. Are his duties as an area director, is that what you 4 call them?</p> <p>5 A. Yes.</p> <p>6 Q. Are they the same as those that Michele does?</p> <p>7 A. Yes.</p> <p>8 Q. Who oversees Brad?</p> <p>9 A. I do.</p> <p>10 Q. Does Brad report to anybody else?</p> <p>11 A. No.</p> <p>12 Q. Who does Michele report to?</p> <p>13 A. Myself.</p> <p>14 Q. Are there any other employees that report directly to 15 you?</p> <p>16 A. All my employees report to me.</p> <p>17 Q. Do you have an organizational structure for your 18 companies?</p> <p>19 A. I do.</p> <p>20 Q. Is it written down?</p> <p>21 A. No.</p> <p>22 Q. Can you walk me through it?</p> <p>23 A. Sure. I am the president. I am the operating 24 partner.</p> <p>25 Brad oversees my five Hungry Howie's Pizza</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. Help me understand.</p> <p>2 A. Sure.</p> <p>3 Q. Well, let's back up.</p> <p>4 MR. THEUER: Let me just object as to 5 relevance.</p> <p>6 But go ahead.</p> <p>7 BY MS. ELLIS:</p> <p>8 Q. Who is Michele paid by? You said The Word 9 Enterprises?</p> <p>10 A. Correct.</p> <p>11 Q. But she provides services to all of the other 12 restaurants as well?</p> <p>13 A. St. Johns isn't there, but, yes, the other three.</p> <p>14 Q. St. Johns, Perry?</p> <p>15 A. Not St. Johns. It would be Perry, Durand, and 16 Haslett.</p> <p>17 Q. But she did provide services to St. Johns?</p> <p>18 A. Yes.</p> <p>19 Q. Then you said Brad Follman is the other area manager?</p> <p>20 A. Yes.</p> <p>21 Q. And he helps the two Lansing locations?</p> <p>22 A. There would be he oversees five. Those remaining five 23 restaurants, Hungry Howie's, he oversees those other 24 five.</p> <p>25 Q. Does he receive any funds from any of The Word</p>	<p style="text-align: right;">Page 56</p> <p>1 restaurants in Lansing area. Michele oversees the 2 other three. They both report to me on a daily, 3 weekly basis. That's it.</p> <p>4 Q. Do the general managers of the stores report to them?</p> <p>5 A. Yes. Sorry.</p> <p>6 Q. And the employees of the stores report to the general 7 managers?</p> <p>8 A. Correct.</p> <p>9 Q. Would either Brad or Michele have the power to 10 terminate an employee without you knowing?</p> <p>11 A. Yes.</p> <p>12 Q. Would the general managers have the power to do that?</p> <p>13 A. Without me knowing? Yes. Not without Michele knowing 14 or Brad.</p> <p>15 Q. Would the general managers be able to change the rate 16 of somebody's pay without Michele or Brad knowing?</p> <p>17 A. They could change -- no, I don't think so. They 18 could -- no. I mean, no. Michele would know because 19 she does her payroll, so she would see it.</p> <p>20 That was the question, right?</p> <p>21 Q. Yes.</p> <p>22 Would they need her approval?</p> <p>23 A. Yes.</p> <p>24 Q. Would they need your approval?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q. Would they need your approval to fire somebody?</p> <p>2 A. No.</p> <p>3 Q. Would they need your approval to -- would a general</p> <p>4 manager need Michele's approval to change the manner</p> <p>5 in which someone was paid?</p> <p>6 A. Yes.</p> <p>7 Q. Would they need your approval to do that?</p> <p>8 A. No.</p> <p>9 Q. Would a general manager need approval to change the</p> <p>10 reimbursement rate by which an employee was provided</p> <p>11 for reimbursement?</p> <p>12 A. Yes.</p> <p>13 Q. Would they need Michele's approval?</p> <p>14 A. Yes.</p> <p>15 Q. Would they need your approval?</p> <p>16 A. Wouldn't need it but Michele would bring it to me.</p> <p>17 Q. Has that ever happened?</p> <p>18 A. Not to my knowledge. If we're talking about</p> <p>19 reimbursement, not hourly wage. That's a state, a</p> <p>20 federal law.</p> <p>21 Compensation? Couldn't happen without</p> <p>22 Michele's knowledge.</p> <p>23 Q. You mean if somebody got a promotion and was given</p> <p>24 more money?</p> <p>25 A. Either more money or less money.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. Who would have?</p> <p>2 A. Either Brad or Michele.</p> <p>3 Q. Would they have the power to change it themselves?</p> <p>4 A. No, no.</p> <p>5 Q. Did you determine that it should be between</p> <p>6 thirty-five and fifty dollars per week?</p> <p>7 A. We discussed and we agreed upon that rate.</p> <p>8 Q. You discussed that with each of them?</p> <p>9 A. Yeah.</p> <p>10 Q. What are the duties of a delivery driver in one of</p> <p>11 your pizza locations?</p> <p>12 A. The duties of a delivery driver would be to take a</p> <p>13 delivery to a predetermined destination, deliver the</p> <p>14 pizza there, accept the cash if it's a cash payment or</p> <p>15 it's to a credit card, online, over the phone, or</p> <p>16 through our POS system, to follow all the state and</p> <p>17 federal laws of driving on the road, come back to the</p> <p>18 restaurant, do it over again.</p> <p>19 Q. Would you hire somebody as a delivery driver if they</p> <p>20 didn't have a car?</p> <p>21 A. If they didn't own the car or --</p> <p>22 Q. If they didn't have access to a car.</p> <p>23 A. No, they couldn't be a delivery driver if they didn't</p> <p>24 have access to a car.</p> <p>25 Q. Would you say the primary duty of all delivery drivers</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Does that happen?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. Who trained Michele and Brad?</p> <p>4 A. Myself.</p> <p>5 Q. And what are their job responsibilities? You said</p> <p>6 overseeing the stores. Anything else?</p> <p>7 A. That would be my best way to explain it.</p> <p>8 Q. Do they have written job descriptions?</p> <p>9 A. No.</p> <p>10 Q. Are they paid hourly or salary?</p> <p>11 A. Salary.</p> <p>12 Q. Are they reimbursed for mileage?</p> <p>13 A. Yes.</p> <p>14 Q. Using what method?</p> <p>15 A. Compensation per week, so much money.</p> <p>16 Q. They're provided a flat rate per week?</p> <p>17 A. Yeah.</p> <p>18 Q. How much is that?</p> <p>19 A. Unless it's changed, and I don't know if it has, it</p> <p>20 was between thirty-five and fifty dollars a week for</p> <p>21 gas, fuel.</p> <p>22 Q. Who would change it if you weren't the one to change</p> <p>23 it?</p> <p>24 A. They would have brought it to my attention. I just</p> <p>25 don't recall.</p>	<p style="text-align: right;">Page 60</p> <p>1 for the Hungry Howie's locations that you own is to</p> <p>2 deliver pizzas to customers?</p> <p>3 A. Yes.</p> <p>4 Q. Is there any meaningful differences between those</p> <p>5 duties from store to store?</p> <p>6 A. No.</p> <p>7 Q. Is there any meaningful differences between those</p> <p>8 duties between driver to driver?</p> <p>9 A. Depends on if a driver's got seniority, like he's been</p> <p>10 there longer so we tenured him at a different pay rate</p> <p>11 or something like that. Each and every driver is paid</p> <p>12 based on, you know, the minimum wage.</p> <p>13 Q. I was asking about their job responsibilities, not</p> <p>14 their pay.</p> <p>15 Would there be any difference in job</p> <p>16 responsibilities between driver to driver?</p> <p>17 A. No.</p> <p>18 Q. Do the delivery drivers have a written job</p> <p>19 description?</p> <p>20 A. Yes, I believe they have responsibilities. I don't</p> <p>21 know if it's a written -- it's in the employee</p> <p>22 handbook obviously.</p> <p>23 (Deposition Exhibit No. 6 marked and</p> <p>24 attached.)</p> <p>25 BY MS. ELLIS:</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q. Handing you Exhibit 6. I'll direct you to page 2 TWE000009. 3 Are these the delivery responsibilities you 4 were referring to? 5 A. Correct. 6 Q. Are you aware of any other written job description 7 that your delivery drivers have at any of your stores? 8 A. No. 9 Q. Does the same job description cover all of the drivers 10 for all of your stores? 11 A. Yes. 12 Q. And that's for all the pizza stores that you own, 13 correct? 14 A. Correct. 15 Q. Has this job description changed in any way since 16 2015? 17 A. No. 18 Q. Has this changed in any way since 2014? 19 A. No. 20 Q. How many days per week do delivery drivers work? 21 A. It varies. If they're a part-time driver, they're all 22 part-time drivers. But they can work from one day 23 to -- we normally don't work people more than forty 24 hours a week, so -- 25 Q. Without considering tips for a moment, are there any</p>	<p style="text-align: right;">Page 63</p> <p>1 A. No. I mean, I see some of it. It's not dated. 2 Q. Were you asked to produce documents in response to 3 requests in this lawsuit? 4 A. Yes. 5 Q. And did you pull those documents that you were 6 requested? 7 A. I or my area director would have pulled these, and I 8 believe Michele pulled this one if this was provided 9 to you. 10 Q. So it's your understanding that this is not the most 11 recent copy of the tip policy? 12 A. I think it is. I was reading down further. I saw the 13 minimum wage was on. So once I got down to paragraph 14 maybe three or four, I saw that it was getting up 15 there, but obviously minimum wage today is eight 16 ninety. I think this would have been in effect at 17 that time, so -- 18 Q. Who's in charge of updating the tip policy? 19 A. I would be the tip policy with Michele. 20 Q. Do you recall updating this document at any point? 21 A. I can't recall. I mean, it looks like one that we 22 have and that we use, but, once again, I did not 23 provide this one myself personally. I think I called 24 on Michele to provide the documentation that you 25 needed for some things.</p>
<p style="text-align: right;">Page 62</p> <p>1 delivery drivers employed by any of The Word 2 Enterprises that receive higher than a minimum wage as 3 their rate of pay? 4 A. I want to say there might be some. 5 Q. Do you know who they are? 6 A. I don't have that information in front of me. 7 Q. Have all of your delivery drivers been on a tip credit 8 since 2014? 9 A. I believe so, yes. 10 Q. Is the tip credit used to help the drivers meet the 11 federal minimum wage? 12 A. I want to say yes. 13 Q. That they may be paid less? 14 A. Never less than minimum wage. 15 Q. Well, a portion of their tips will be applied to their 16 wages until it reaches the minimum wage, correct? 17 A. That is part of the calculation. 18 (Deposition Exhibit No. 7 marked and 19 attached.) 20 BY MS. ELLIS: 21 Q. Handing you Exhibit 7. 22 Is this the tip credit policy that you use 23 at all of your Hungry Howie's locations? 24 A. Currently or back in that time period? 25 Q. Currently.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Well, as a representative of the company sitting here 2 today, does this accurately describe the tip policy 3 that is used at your Hungry Howie's locations for 4 delivery drivers? 5 MR. THEUER: Objection, asked and answered. 6 You can go ahead and answer if you can. 7 THE WITNESS: Like I said, without any 8 signature or anything on it, I don't have your answer. 9 BY MS. ELLIS: 10 Q. Who's management on this document? 11 A. It would be my area director, Michele, or the general 12 manager of the restaurant. 13 Q. Did you sign this document? 14 A. I did not. 15 Q. Do you know who signed this document? 16 A. No. 17 Q. Generally is it your understanding that delivery 18 drivers may receive an hourly rate of lower than the 19 minimum wage at certain times that they are working 20 for your Hungry Howie's locations? 21 A. Yes. I understand that. 22 Q. And that they receive a tip credit in order to take 23 them to the federal minimum wage, correct? 24 A. Correct. 25 Q. And that lower rate, is that applied or given to the</p>

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<p style="text-align: right;">Page 65</p> <p>1 drivers only when they are delivering or the entire</p> <p>2 time that they're working?</p> <p>3 A. Only when they're delivering.</p> <p>4 Q. Have any of your delivery drivers been paid on a tip</p> <p>5 credit method different than that?</p> <p>6 A. Not to my understanding.</p> <p>7 Q. Is there any reason that you, that you have to believe</p> <p>8 that they may been paid on a tip credit method</p> <p>9 different than that?</p> <p>10 A. No.</p> <p>11 Q. You said drivers are paid every two weeks?</p> <p>12 A. Correct.</p> <p>13 Q. All drivers?</p> <p>14 A. Correct.</p> <p>15 Q. Is that for all the Hungry Howie's locations you own?</p> <p>16 A. I believe so. I have different accountants for</p> <p>17 different restaurants.</p> <p>18 Q. What about the ones owned by The Word Enterprises, are</p> <p>19 those all serviced by the same accountant?</p> <p>20 A. Yes.</p> <p>21 Q. Are they all -- are all those drivers paid on a</p> <p>22 two-week basis?</p> <p>23 A. Yes.</p> <p>24 Q. How often are drivers reimbursed for vehicle expenses</p> <p>25 at the locations owned by The Word Enterprises</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Now we're up to two twenty-five per delivery to Perry.</p> <p>2 Q. When did that change?</p> <p>3 A. Sometime last year, maybe August of 2016 I think</p> <p>4 maybe.</p> <p>5 Q. So drivers are paid nightly based on the number of</p> <p>6 deliveries that they've made?</p> <p>7 A. They're compensated nightly for every run that they</p> <p>8 make. They get paid X amount of dollars based on the</p> <p>9 number of deliveries, dependent upon where they</p> <p>10 deliver to.</p> <p>11 Q. So when you say they're compensated, they walk out of</p> <p>12 the restaurant with a check?</p> <p>13 A. Cash.</p> <p>14 Q. They're paid cash every night for the deliveries that</p> <p>15 they make?</p> <p>16 A. Yes.</p> <p>17 Q. Do does The Word Enterprises, any of The Word</p> <p>18 Enterprises that you have an ownership interest in</p> <p>19 classify its delivery drivers as exempt or nonexempt</p> <p>20 from the Fair Labor Standards Act?</p> <p>21 A. I don't have the answer. I think it's nonexempt, but</p> <p>22 I'm not sure to be honest with you. I would have to</p> <p>23 look at the paperwork that we filled out.</p> <p>24 Q. Do any of The Word Enterprises or do all The Word</p> <p>25 Enterprises that you have an ownership interest in</p>
<p style="text-align: right;">Page 66</p> <p>1 collectively? When I say The Word Enterprises, I mean</p> <p>2 all of The Word Enterprises.</p> <p>3 A. Well, they're not reimbursed. They have compensation</p> <p>4 on a nightly basis.</p> <p>5 Q. Okay. What do you mean by that?</p> <p>6 A. They get paid minimum wage plus so much per run, so,</p> <p>7 per address that they go to.</p> <p>8 Q. And you're saying they're paid nightly?</p> <p>9 A. Correct, for that delivery fee that they get</p> <p>10 reimbursed for or compensated for.</p> <p>11 Q. So earlier you said that drivers at the St. Johns,</p> <p>12 Perry, and Haslett locations are paid on a per trip</p> <p>13 reimbursement rate, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that's seventy-five cents per trip?</p> <p>16 A. It depends on which restaurant it is, but it's more</p> <p>17 than that in some cases like Perry if we're talking</p> <p>18 specifically.</p> <p>19 Q. And Perry, if a delivery goes to the Laingsburg area,</p> <p>20 they're paid a dollar seventy-five?</p> <p>21 A. Yes.</p> <p>22 Q. Is this policy written down anywhere?</p> <p>23 A. I would have to check on that, but today they're</p> <p>24 actually paid more than that.</p> <p>25 Q. How much are they paid more than that?</p>	<p style="text-align: right;">Page 68</p> <p>1 classify your delivery drivers as exempt or nonexempt</p> <p>2 from state minimum wage laws?</p> <p>3 A. They're not exempt, so that means that they would make</p> <p>4 minimum wage at least.</p> <p>5 Q. Are you asking me?</p> <p>6 A. I don't know to be honest with you.</p> <p>7 Q. Okay.</p> <p>8 A. I'm having a hard time with that one.</p> <p>9 MR. THEUER: If you don't know, just say</p> <p>10 you don't know.</p> <p>11 THE WITNESS: I don't know. I'm sorry.</p> <p>12 BY MS. ELLIS:</p> <p>13 Q. I want to talk a little bit about the policies that</p> <p>14 you have for delivery drivers.</p> <p>15 You've already said that to be hired as a</p> <p>16 delivery driver for any of the locations owned or</p> <p>17 operated by your -- by The Word Enterprises, a person</p> <p>18 would have to either own or have access to a vehicle,</p> <p>19 is that right?</p> <p>20 A. Correct.</p> <p>21 Q. That vehicle is required to be in safe working</p> <p>22 condition, correct?</p> <p>23 A. Correct.</p> <p>24 Q. It's required to be legal?</p> <p>25 A. I don't know what that means.</p>

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<p style="text-align: right;">Page 69</p> <p>1 Q. Well, registered with the state.</p> <p>2 A. Yes.</p> <p>3 Q. It's required to have insurance, right?</p> <p>4 A. Correct.</p> <p>5 Q. And it's required to actually run, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And it's expected that if a driver has a vehicle that</p> <p>8 didn't run that they would need to do whatever they</p> <p>9 needed to do to make it run, right?</p> <p>10 A. They have to have a working vehicle.</p> <p>11 Q. So if their car broke down, they had to fix it?</p> <p>12 A. Yes.</p> <p>13 Q. If they didn't, they wouldn't be able to make</p> <p>14 deliveries?</p> <p>15 A. Correct.</p> <p>16 Q. None of The Word Enterprises -- were you going to say</p> <p>17 something?</p> <p>18 A. Uh-uh.</p> <p>19 Q. None of The Word Enterprises that you own or operate</p> <p>20 provide vehicles to your delivery drivers, do they?</p> <p>21 A. No, we do not.</p> <p>22 Q. Are there any other requirements for delivery drivers</p> <p>23 and the vehicles that you have that we haven't</p> <p>24 discussed already?</p> <p>25 A. I would point me to the employee handbook, and one</p>	<p style="text-align: right;">Page 71</p> <p>1 A. No.</p> <p>2 Q. Do you track delivery drivers' vehicle costs?</p> <p>3 A. No.</p> <p>4 Q. Do you track the amount of money that they spend on</p> <p>5 gas?</p> <p>6 A. No.</p> <p>7 Q. Do you track the amount of money that they spend on</p> <p>8 repairs to their vehicles?</p> <p>9 A. No.</p> <p>10 Q. Have you personally coordinated with Hungry Howie's</p> <p>11 corporate on vehicle reimbursement?</p> <p>12 A. No.</p> <p>13 Q. Has The Word Enterprises, any of The Word Enterprises,</p> <p>14 consulted with Hungry Howie's corporate on vehicle</p> <p>15 reimbursement?</p> <p>16 A. No.</p> <p>17 Q. On driver development?</p> <p>18 A. No.</p> <p>19 Q. On trip reimbursement?</p> <p>20 A. No.</p> <p>21 Q. Have you or any of The Word Enterprises consulted or</p> <p>22 coordinated with any other pizza company about vehicle</p> <p>23 reimbursement?</p> <p>24 A. We do a competitive analysis by calling every -- not</p> <p>25 every -- by calling some of the major pizza</p>
<p style="text-align: right;">Page 70</p> <p>1 through twenty-three would say what the</p> <p>2 responsibilities are.</p> <p>3 Q. You're looking at page nine?</p> <p>4 A. Page fourteen which it's actually page fourteen.</p> <p>5 MR. THEUER: Bates number TWE09.</p> <p>6 THE WITNESS: Yeah, there you go.</p> <p>7 BY MS. ELLIS:</p> <p>8 Q. Does The Word Enterprises or any of the Hungry Howie's</p> <p>9 locations that The Word Enterprises stores or</p> <p>10 companies operate track the mileage that drivers use</p> <p>11 on the job?</p> <p>12 A. We don't track it. We have access to MapQuest it, a</p> <p>13 delivery software that we have within our system, but</p> <p>14 we do not track exactly how many miles they drive each</p> <p>15 shift.</p> <p>16 Q. Do you track how many miles they drive when they're</p> <p>17 not working and delivering pizzas?</p> <p>18 A. Excuse me?</p> <p>19 MR. THEUER: Object to the form of the</p> <p>20 question.</p> <p>21 BY MS. ELLIS:</p> <p>22 Q. Do you track the mileage of your employees when</p> <p>23 they're not delivering pizza?</p> <p>24 A. No.</p> <p>25 Q. Do you track employees' delivery costs?</p>	<p style="text-align: right;">Page 72</p> <p>1 restaurants in each market to see what they're paying</p> <p>2 their delivery drivers.</p> <p>3 Q. Who is we?</p> <p>4 A. Myself and Michele.</p> <p>5 Q. When's the last time you did that?</p> <p>6 A. 2014. No. The last time, it would have been maybe</p> <p>7 last year, 2016, but we've done it almost every year.</p> <p>8 Q. When's the first time that you did that?</p> <p>9 A. The time I ever opened a restaurant, so whatever date</p> <p>10 that is.</p> <p>11 Q. 2000?</p> <p>12 A. Something like that.</p> <p>13 Q. You said you did it last year in 2016, is that right?</p> <p>14 A. Uh-huh, yes, correct.</p> <p>15 Q. In 2014 you think was the time before that?</p> <p>16 A. No. It would have been 2015, 2014, 2013, and so on.</p> <p>17 Q. Every year you do an analysis of the market?</p> <p>18 A. We do.</p> <p>19 Q. Do you have that process written down anywhere?</p> <p>20 A. No.</p> <p>21 Q. Do you have the results of that process recorded</p> <p>22 anywhere?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. Who did you call last year when you did this analysis</p> <p>25 of the market?</p>

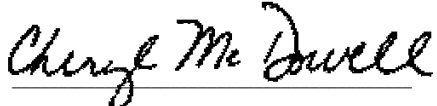
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<p style="text-align: right;">Page 73</p> <p>1 A. I won't give you exact because I don't have that, but</p> <p>2 I'll tell you typically we go with the national chains</p> <p>3 which would be Domino's Pizza, Poppa John's if it's in</p> <p>4 the market, Pizza Hut, Jets Pizza, Cottage Inn,</p> <p>5 Little Caesars.</p> <p>6 Q. And would you call a store or their corporate office?</p> <p>7 Who would you call?</p> <p>8 A. We would call an individual restaurant within our</p> <p>9 market, whatever the competitive set was, and we would</p> <p>10 find out how much they're paying their delivery</p> <p>11 drivers and if there's commission or reimbursement.</p> <p>12 Q. What was that last part? I'm sorry.</p> <p>13 A. If there's -- what the delivery reimbursement might be</p> <p>14 or what their hourly wage might be. Some give that</p> <p>15 information, some do not.</p> <p>16 Q. You said you make those calls?</p> <p>17 A. I have in the past. Michele will most often do it now</p> <p>18 or Brad.</p> <p>19 Q. And you don't keep that in a spreadsheet anywhere, the</p> <p>20 results of what you found?</p> <p>21 A. No. We'll make a calculation based on what the market</p> <p>22 is paying.</p> <p>23 Q. And you said your rates changed last year in 2016?</p> <p>24 A. I believe so.</p> <p>25 Q. It went from a dollar seventy-five per delivery to</p>	<p style="text-align: right;">Page 75</p> <p>1 made?</p> <p>2 A. I do not recall.</p> <p>3 Q. What about in 2014?</p> <p>4 A. I do not recall. I don't have it in front of me.</p> <p>5 Q. When you say you don't have it in front of you, what</p> <p>6 do you mean?</p> <p>7 A. Such as whether it was state law, federal law, minimum</p> <p>8 wage change, whether it was we decided in one</p> <p>9 particular restaurant the delivery range might be</p> <p>10 larger than another one. We may have just</p> <p>11 individually adjusted that one.</p> <p>12 But with multiple restaurants, just not off</p> <p>13 the top of my head.</p> <p>14 Q. I'm just asking in response to the survey that you do</p> <p>15 of the other restaurants if you made any changes.</p> <p>16 Is this part of a bigger process that you</p> <p>17 evaluate laws as well?</p> <p>18 A. Well, you have minimum state and federal laws that you</p> <p>19 have to abide by each year, so we look at those, and</p> <p>20 recently they have been changing often and then just</p> <p>21 the competitive set.</p> <p>22 Q. Is there a certain time of the year that you do this</p> <p>23 analysis?</p> <p>24 A. We try to do it in the beginning, the first quarter if</p> <p>25 possible, depending on, but it will be dependent upon</p>
<p style="text-align: right;">Page 74</p> <p>1 Laingsburg to two twenty-five?</p> <p>2 A. That one in particular, yes.</p> <p>3 Q. Were there other changes?</p> <p>4 A. Each restaurant we look at separately and differently,</p> <p>5 so it depends on if there's any unique situations.</p> <p>6 Laingsburg is the only one that is unique</p> <p>7 in those restaurants that Michele would watch over.</p> <p>8 Q. Well, let's go through them one by one.</p> <p>9 A. Sure.</p> <p>10 Q. Do you recall any changes in the Perry location</p> <p>11 besides the Laingsburg rate change in 2016?</p> <p>12 A. No.</p> <p>13 Q. What about the Owosso location?</p> <p>14 A. Closed.</p> <p>15 Q. St. Johns was closed?</p> <p>16 A. Closed.</p> <p>17 Q. What about the Haslett location?</p> <p>18 A. No changes.</p> <p>19 Q. Did you make any changes in your Durand location?</p> <p>20 A. No.</p> <p>21 Q. Did you make any changes in any of your other</p> <p>22 locations?</p> <p>23 A. I would have to check. I don't have that information</p> <p>24 available.</p> <p>25 Q. What about in 2015, do you recall if any changes were</p>	<p style="text-align: right;">Page 76</p> <p>1 when that minimum wage hike might take effect again.</p> <p>2 Q. You don't have records of these, though, is what you</p> <p>3 said?</p> <p>4 A. No, we do not.</p> <p>5 Q. The only records would be reflected -- the only</p> <p>6 records of these changes would be reflected in the pay</p> <p>7 records of the employees themselves?</p> <p>8 A. Correct.</p> <p>9 Q. Does The Word Enterprises or any of The Word</p> <p>10 Enterprises that you own or operate have a</p> <p>11 record-retention/preservation policy?</p> <p>12 A. No.</p> <p>13 Q. Do you keep a record of your employees' -- strike</p> <p>14 that.</p> <p>15 How do you keep a record of your employees'</p> <p>16 work schedules so that they may be paid?</p> <p>17 A. In our Revention POS System, and then, of course,</p> <p>18 clock-in, clock-out time, schedules that we would, you</p> <p>19 know, provide to our accountant.</p> <p>20 Q. Do you have access personally to the Revention System?</p> <p>21 A. I do.</p> <p>22 Q. Is it a website-based system?</p> <p>23 A. No.</p> <p>24 Q. Is it hosted on individual computers?</p> <p>25 A. It can be.</p>

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<p style="text-align: right;">Page 121</p> <p>1 said yes, we would ask how much they pay, how they</p> <p>2 compensated their delivery drivers, and it would give</p> <p>3 us an hourly rate. They may give us you get a</p> <p>4 commission or a dollar a run and you get to keep your</p> <p>5 tips.</p> <p>6 That's standard operating procedure for</p> <p>7 most delivery pizza carryout restaurants based on what</p> <p>8 we've done.</p> <p>9 Q. Would you tell them you were another restaurant owner?</p> <p>10 A. Absolutely not.</p> <p>11 Q. Does Hungry Howie's corporate ever audit any of your</p> <p>12 stores for anything?</p> <p>13 A. They have never audited my stores.</p> <p>14 Q. Could they?</p> <p>15 A. If they wanted to, they could.</p> <p>16 Q. For what sorts of things?</p> <p>17 A. Financial record-keeping.</p> <p>18 Q. Do they provide you with any recommendations on driver</p> <p>19 reimbursement?</p> <p>20 A. Not in writing. Not that I know of.</p> <p>21 Q. Have you had any corporate conversations, oral</p> <p>22 conversations, with people at Hungry Howie's corporate</p> <p>23 about driver reimbursement?</p> <p>24 A. I worked there. I'm going to say I think I have.</p> <p>25 I've got to believe I have.</p>	<p style="text-align: right;">Page 123</p> <p>1 the employee handbook we discussed earlier?</p> <p>2 A. Yes.</p> <p>3 Q. And then it's your responsibility to update?</p> <p>4 A. Correct.</p> <p>5 Q. Do they ever provide you with additional updates of</p> <p>6 those documents?</p> <p>7 A. If it's state or federal mandated, yes. Otherwise,</p> <p>8 not to my knowledge.</p> <p>9 MS. ELLIS: It sounds like there may be</p> <p>10 some additional documents that haven't been produced.</p> <p>11 He said he'd check on a number of things.</p> <p>12 I want to reserve the right to call him</p> <p>13 back to talk about those things if need be, but for</p> <p>14 now, we're done with him.</p> <p>15 MR. THEUER: All right.</p> <p>16</p> <p>17 (Deposition concluded at 1:19 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Do you remember what they were about?</p> <p>2 A. No.</p> <p>3 Q. When you worked for Hungry Howie's corporate as a</p> <p>4 consultant, you also owned Hungry Howie's Pizza</p> <p>5 stores, is that right?</p> <p>6 A. Correct.</p> <p>7 Q. So when you spoke to other Hungry Howie's franchisees,</p> <p>8 were you speaking as a Hungry Howie's -- as a</p> <p>9 colleague or as a resource from the company?</p> <p>10 A. I have no idea. Depends on what the situation was and</p> <p>11 what we were talking about.</p> <p>12 Q. Are other consultants employed? Do you work with a</p> <p>13 consultant with Hungry Howie's now?</p> <p>14 A. I do.</p> <p>15 Q. Is that person a business owner, also?</p> <p>16 A. No.</p> <p>17 Q. What does that consultant provide to you?</p> <p>18 A. The same thing that I provided to those other ones</p> <p>19 when you asked earlier as far as operating, opening a</p> <p>20 restaurant, giving you an inspection review, make sure</p> <p>21 that our standards are up to whatever corporate's</p> <p>22 asking us to do.</p> <p>23 Q. Do they help you update your documents?</p> <p>24 A. No.</p> <p>25 Q. Do they provide you with the initial documents such as</p>	<p style="text-align: right;">Page 124</p> <p>1 STATE OF MICHIGAN)</p> <p>2)SS.</p> <p>3 COUNTY OF LIVINGSTON)</p> <p>4 CERTIFICATE OF NOTARY PUBLIC</p> <p>5 I certify that this transcript</p> <p>6 is a complete, true, and correct record of the</p> <p>7 testimony of the deponent to the best of my ability</p> <p>8 taken on Monday, June 19, 2017.</p> <p>9 I also certify that prior to</p> <p>10 taking this deposition, the witness was duly sworn by</p> <p>11 me to tell the truth.</p> <p>12 I also certify that I am not a</p> <p>13 relative or employee of a party, or a relative or</p> <p>14 employee of an attorney for a party, have a contract</p> <p>15 with a party, or am financially interested in the</p> <p>16 action.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 </p> <p>22 Cheryl McDowell, CSR-2662, RPR</p> <p>23 Notary Public, Livingston County</p> <p>24 State of Michigan</p> <p>25 Commission Expires September 13, 2019</p>